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Pro Per

UNITED STATES DISTRICT COURT, DISTRICT OF ARIZONA
IN AND FOR MARICOPA COUNTY, ARIZONA

CIV '09 0686 PHX ROS

<p>Gary Wayne Gipson, Plaintiff, vs. Carrington Mortgage Services, LLC, Does 1 through 10, inclusive, Defendants.</p>	<p>) Case No.:)) COMPLAINT TO ENJOIN) FORECLOSURE:) 1. Unfair Debt Collection) Practices) 2. Predatory Lending Practices) 3. RICO Violations)) Hearing:) Time:) Dept:) Judge:) Action Filed:) Trial Date:)) [Unlimited Jurisdiction Case]))</p>
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GENERAL CHARGING ALLEGATIONS
AS TO ALL CAUSES OF ACTION
(AS TO ALL NAMED DEFENDANTS)

1. The Plaintiff Gary Wayne Gipson Jr. in the above captioned cause, now and at all times was the owner and resident of real property commonly known as 14870 W. Windsor Ave. Goodyear AZ. 85338 Maricopa County, Goodyear, Arizona (Subject Property). The legal description for the subject property is Lot 87, of GOODYEAR PLANNED REGIONAL CENTER PARCEL 9, ACCORDING TO

1 THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF
2 MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 648 OF MAPS, PAGE 14.
3 The assessor's parcel number is 508-14-087.

4 2. Defendant Carrington Mortgage Services, LLC, hereinafter
5 (CMS) is a Delaware Limited Liability corporation
6 registered to do business in the State of Arizona as a
7 foreign entity, and the mortgage servicer for
8 plaintiff's "federally related mortgage loan" account,
9 as those terms are defined in the RESPA, 12 U.S.C. §
10 2602(1) and 12 U.S.C. § 2605(i)(2), having offices in
11 Irvine, CA, Phoenix, AZ. and Greenwich, CT. At all times
12 material to this action defendant CMS regularly
13 transacted business in the State of Arizona.

14 3. Defendant CMS is a "debt collector" of plaintiff's debt
15 as those terms are defined in the FDCPA, 15 U.S.C. §
16 1692a.

17 4. Plaintiff does not know the true names, capacities, or
18 basis for liability of defendants sued as Doe 1 through 10.
19 Each fictitiously named defendant is in some manner liable to
20 plaintiff, or claims some right, title, or interest in subject
21 property, or both. Plaintiff will amend this complaint to
22 allege their true identities, capacities and roles as and when
23 they are ascertained.

24 5. Defendant CMS, identified on a certain Exhibit 1 has
25 notified plaintiff of its intention to sell plaintiff's home
26 in a foreclosure sale.

27 6. Plaintiff alleges that all defendants named and unnamed
28 in this complaint are in some way involved in the actions
complained of herein as either independent actors, or as

agents or principals of the other in foreclosure proceedings against plaintiff.

7. The "Security Instrument" is the deed of trust.

8. The "Note", is the negotiable instrument, which is referred to in the Security Instrument identified in the Notice of Sale (Exhibit 1) and which allegedly created plaintiff's obligation to repay a debt to a beneficiary.

9. Plaintiff is informed, believes and alleges that each defendant in pursuing non judicial foreclosure represented that they had the right to payment under the Note of which was secured by the Security Instrument that is identified in Exhibit 1 to this complaint.

10. Upon information and belief, plaintiff alleges that defendants and each of them have not provided plaintiff with a copy of the original note referred to in the Security Instrument identified in Exhibit 1, any access to said Note, any evidence that such Note is, or ever was, in existence, and yet they are attempting to enforce the obligations of said Note through a non-judicial foreclosure. Plaintiff requested the identity of said holders of the "Note" along with an accounting by way of a Qualified Written Request under the RESPA and TILA laws, on Feb.28, 2009. A copy of which is attached as Exhibit "2" and incorporated here by reference. If said Note was available, Defendant would have provided Plaintiff with a copy along with account activity as Plaintiff requested meeting the legal requirements of federal RESPA and TILA laws. Furthermore Defendant would have attached it here as an Exhibit. A.R.S. § § 47-3301 clearly sets forth the

1 requirements to enforce a note: the enforcing party must be
2 a holder in due course on the note, a non-holder in
3 possession of the note with the rights of a holder in due
4 course must satisfy the requirements of A.R.S. §§ 47-3309
5 or § 47-3418, subsection D relating to a lost or destroyed
6 note. Defendants and each of them have not provided any
7 evidence of their legal right(s) to enforce any note(s) by
8 demonstrating possession of any note(s) by any particular
9 defendant or entity.

10 11. Upon information and belief, none of the Defendants
11 have a present right to initiate foreclosure under the
12 Security Instrument identified in the Notice of Sale
13 attached as Exhibit 1, nor does any defendant have the
14 right to direct any defendant to foreclose and sell the
15 subject property of plaintiff.

16 12. Plaintiff is informed, believes, and alleges that in
17 all wrongful acts alleged in this complaint, the defendants
18 and each of them have utilized the United States mail in
19 furtherance of their conspiracy to both attempt and to
20 affect unlawful collection on negotiable instruments when
21 they are not entitled under law to do so, and, assuming
22 *arguendo* that any defendant does have the right to proceed
23 to foreclose under the note, defendants and each of them
24 have and have attempted to profit from those actions in
25 amounts greater than their legal rights under the note to
26 do so.

27 13. Plaintiff is informed, believes, and alleges that the
28 defendants and each of them, in so acting in this case and

1 with respect to many other mortgage or trust deed security
2 instruments engaged in a pattern and practice of utilizing
3 the non-judicial foreclosure procedures of this state to
4 foreclose on properties when they do not, in fact have the
5 right to do so, knowing that the property owners affected do
6 not have the knowledge and means to contest the right of said
7 defendants to do so.

8 14. Plaintiff is informed, believes, and alleges that
9 Defendants and each of them, in committing the acts alleged
10 in this and in other cases, are engaging in a pattern of
11 unlawful activity, and have known or should have known that
12 they had no right to initiate foreclosure proceedings unless
13 and until they were in possession of the original note
14 properly endorsed or assigned to them as of a date preceding
15 the notice of default recorded by the Trustee.

16 15. Plaintiff is informed, believes, and alleges that the
17 true facts were that none of the defendants were in possession
18 of the note or non-holders of the note entitled to payment, as
19 those terms are used in A.R.S. §§§ 47-3301, 47-3309, 47-3418,
20 subsection D, and therefore, defendants and each of them were
21 proceeding to foreclosure non-judicially without right under
22 the law.

23 16. The defendants and each of them, misrepresented the
24 facts regarding their legal right to enforce the note and to
25 foreclose on plaintiff's property intending either to force
26 plaintiff to pay large sums of money to defendants and each of
27 them to which they were not entitled under the law, or to
28 abandon plaintiff's property to foreclosure sale.

17. Plaintiff is informed, believes, and alleges that defendant CMS identified in Exhibit 1, has acted unlawfully to collect on and attempt to satisfy an alleged debt by taking either or both plaintiff's real property through foreclosure and plaintiff's monetary personal property through debt collection activities and communications.

18. The real property owned by plaintiff that is identified in Exhibit 1 is unique. Therefore, should defendants and each of them, not be enjoined, plaintiff and his family will suffer irreparable injury for which there is no adequate remedy in law when defendants proceed to sell or causes to be sold the subject property at foreclosure sale.

19. As a result of the aforementioned facts and allegations, plaintiff has been damaged in having to seek legal assistance before bringing this action along with court cost and fees to enjoin the threatened non-judicial foreclosure of the subject property, and will have to incur additional fees to stop the wrongful acts of the defendants and each of them. Plaintiff has been damaged in other ways that are not readily apparent at this time, but will amend this complaint to allege further damages as they are determined.

FIRST CAUSE OF ACTION

UNFAIR DEBT COLLECTION PRACTICES

(AS TO ALL NAMED DEFENDANTS)

20. Plaintiff realleges paragraphs 1-19 of the General Charging Allegations as if fully set forth herein.

1 21. Plaintiff is informed, believes, and alleges that
2 defendant CMS is a debt collector. Defendant identified itself
3 as a debt collector in Exhibit 1; therefore, plaintiff
4 realleges that defendant CMS has not acted solely in its
5 capacity as a trustee.

6 22. Plaintiff is informed, believes, and alleges that
7 defendants and each of them did not provide the proper, or
8 any, notice required under Federal Fair Debt Collections Act.
9 15 U.S.C. Title 41, Subchap. V, §§ 1692g informing plaintiff
10 of plaintiff's right to request validation of the debt which
11 defendants and each of them were attempting to collect.

12 23. Plaintiff is informed, believes, and thereupon alleges
13 that the defendants and each of them, in taking the actions
14 aforementioned, have violated provisions of Arizona's Consumer
15 Fraud Act, including but not limited to A.R.S § 44-1521 *et*
16 *seq*, and the Federal Fair Debt Collections Act, 15 U.S.C.,
17 Title 41, Subchap. V, §§ 1692 *et seq*, and the Real Estate
18 Settlement Procedures Act (RESPA), 12 U.S.C. §§ 2601-2617.

19
20 **SECOND CAUSE OF ACTION**

21 **PREDATORY LENDING PRACTICES**

22 **(AS TO ALL NAMED DEFENDANTS)**

23 24. Plaintiff realleges paragraphs 1-19 of the General
24 Charging Allegations and paragraphs 20-23 of the First Cause
25 of Action as fully set forth herein.

26 25. Assuming *arguendo* that the defendant on whose behalf
27 defendant CMS is pursuing foreclosure proceedings against
28 plaintiff does have the right under the law of negotiable
instruments in this state, by possession, endorsement,

1 assignment, agency or otherwise, to receive payment under a
2 valid note, payment of which is secured by the security
3 instrument that is identified in Exhibit 1, and to initiate
4 foreclosure under power of sale contained therein, if any,
5 then that defendant is subject to defenses that would have
6 been available against the initial lender identified as
7 Homecomings Financial. The liability of assignees for the
8 predatory lending practices of their predecessors is
9 specifically provided for in 15 U.S.C. § 1641.

10 26. Plaintiff is informed, believes, and thereupon alleges
11 that defendant CMS has engaged in deceptive practices with
12 respect to plaintiff in violation of the Home Ownership and
13 Equity Protection Act (HOEPA), 15 U.S.C. §§ 1637, the Truth in
14 Lending Act (TILA), 15 U.S.C. § 1601, Regulation Z, 12 C.F.R.
15 226, and the Federal Trade Commission Act (FTC Act), 15 U.S.C.
16 §§ 41-58, the specifics of which are unknown, but which are
17 subject to discovery and with respect to which the specifics
18 will be alleged by amendment to this complaint when
19 ascertained.

20 27. One or more of the predatory lending practices referred
21 to in the previous paragraph permits, under the law, one or
22 more defenses or remedies, the specifics of which will be
23 alleged by amendment to this complaint when ascertained.

24
25 **THIRD CAUSE OF ACTION**

26 **RICO**

27 **(AS TO ALL NAMED DEFENDANTS)**

28 28. Plaintiff realleges paragraphs 1-19 of the General
Charging Allegations, paragraphs 20-23 of the First Cause of

1 Action and paragraphs 24-27 of the Second Cause of Action, as
2 if fully set forth herein.

3 29. In doing the aforesaid acts, defendants and each of
4 them were participating in and have participated in a scheme
5 of racketeering as the term is defined in the federal
6 Racketeer Influenced and Corrupt Organizations (RICO), 18
7 U.S.C. §§ 1961 *et seq*, and the Arizona Anti-Racketeering Act
8 (AZRAC), A.R.S. §§ 13-2301 through 2316, and in so doing, have
9 violated federal and state of Arizona RICO law.

10 30. Plaintiff alleges that defendants and each of them have
11 violated RICO, including but not limited to 18 U.S.C. §
12 1961(1)(A), relating to mail fraud as defined in 18 U.S.C. §
13 1341. Upon information and belief, in all the wrongful acts
14 alleged in this complaint, the defendants and each of them
15 have utilized the United States mail in furtherance of their
16 conspiracy to both attempt and to affect unlawful collection
17 on negotiable instruments when they were not entitled under
18 law to do so, and, assuming *arguendo* that any defendant does
19 have the right to proceed to foreclose under the Note,
20 defendants and each of them have and have attempted to profit
21 from those actions in amounts greater than their rights under
22 the Note to do so.

23 31. Plaintiff is informed, believes, and alleges that the
24 defendants and each of them, in so acting in this case and
25 with respect to many other mortgage or trust deed security
26 instruments engaged in a pattern and practice of utilizing the
27 non-judicial foreclosure procedures of this State to foreclose
28 on properties when they do not, in fact, have the right to do
so, knowing that the property owners affected do not have the

1 knowledge and means to contest the right of said defendants to
2 do so.

3 32. Plaintiff alleges that defendants and each of them have
4 violated RICO, including but not limited to 18 U.S.C. §§
5 1962(b) and (d) through attempts to collect unlawful debts.

6 33. Plaintiff alleges that defendants and each of them have
7 violated RICO, 18 U.S.C. § 1961(1)(A), relating to prohibited
8 interference with commerce, robbery, or extortion, as defined
9 under 18 U.S.C. § 1951.

10 34. Plaintiff alleges that defendants and each of them have
11 also violated RICO, 18 U.S.C. § 1961(1)(A), relating to fraud
12 in the sale of securities.

13 35. Plaintiff is informed, believes, and alleges that
14 defendants and each of them, in committing the acts alleged in
15 this and in other cases, are engaging in a pattern of unlawful
16 activity.

17 36. Plaintiff is therefore entitled to the available
18 remedies under RICO in civil actions.

19
20 **WHEREFORE**, Plaintiff prays that:

- 21 1. Defendants and each of them, be prohibited from conducting
22 any sale of the subject property pending the outcome of
23 this case;
- 24 2. Defendants and each of them, be permanently enjoined from
25 any and all attempts to foreclose on the subject real
26 property unless and until it can present proof that it is
27 entitled, under the law of negotiable instruments in force
28 in Arizona to enforce the underlying promissory note

1 described in the security instrument that is identified in
2 Exhibit 1;

3 3. That Plaintiff be awarded monetary damages against the
4 defendants and each of them, jointly and severally, that
5 plaintiff incurred due to the need to bring this action for
6 injunctive relief according to proof,

7 4. That the plaintiff be awarded statutory damages for Unfair
8 Debt Collection Practices under federal and Arizona
9 statutes;

10 5. That attorney fees be awarded plaintiff as permitted by
11 law;

12 6. That plaintiff be awarded treble damages as permitted by
13 law,

14 7. That prejudgment interest be awarded plaintiff as permitted
15 by law;

16 8. For such other and further equitable relief, declaratory
17 relief and legal damages as may be permitted by law and as
18 the court may consider just and proper.

19
20
21
22 Dated: 4/1/09

23 Gary Wayne Gipson Jr.

24 Gary Wayne Gipson Jr., Plaintiff

VERIFICATION

Gary Wayne Gipson Jr., being first duly sworn upon oath,
deposes and says as follows:

1. I am named Gary Wayne Gipson Jr. in the civil action known
as: the Complaint to Enjoin Foreclosure.
2. I have read the foregoing document, and know the contents
thereof.
3. The statements and matters alleged therein are true of my
own knowledge, except as to those matters stated upon
information and belief and, as to such matters, I believe
them to be true.

Dated this 1st day of April, 2009.

Gary Wayne Gipson Jr.

Gary Wayne Gipson Jr., Plaintiff

AFFIDAVIT

The Plaintiff in the above mentioned Complaint to Enjoin
Foreclosure has appeared before me, being identified by a
valid A3 DRIVERS LIC., on this 1 day of April, 2009,
and did affirm the truthfulness of the statements contained
herein under the penalty of perjury by affixing his seal to this
document in my presences.

1 Gary Wayne Gipson Jr. *Gary Wayne Gipson Jr.*

2 Dated: *4/1/09*

3
4 NOTARY

5 *Patrice Love*

My Commission Expires:

4/10/12

6
7 COUNTY OF MARICOPA

8 STATE OF ARIZONA

